

**EXHIBIT 1**

**Transcript of Settlement Hearing dated December 18, 2008**

1

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 77-71100  
UNITED STATES OF AMERICA,

Plaintiff & Counter-Defendant,

Detroit, Michigan  
and December 18, 2008

THE WAYNE COUNTY DEPT OF HEALTH,  
AIR POLLUTION CONTROL DIVISION,  
Plaintiff,

v.

STATE OF MICHIGAN,  
Defendant, Counter-Plaintiff & Cross-Plaintiff,

v.

CITY OF DETROIT, a municipal corporation  
and DETROIT WATER & SEWERAGE DEPT.,

The Detroit Parties & Cross-The Detroit Parties,

v.

ALL COMMUNITIES AND AGENCIES UNDER CONTRACT  
WITH THE CITY OF DETROIT FOR SEWAGE  
TREATMENT SERVICES, et al.

TRANSCRIPT OF SETTLEMENT HEARING  
BEFORE THE HONORABLE JOHN FEIKENS  
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

For the Court: F. Thomas Lewand (Special Master)  
Valerie J.M. Brader (Judicial Adjunct)  
Timothy O'Brien (Special Master)

For Macomb County: R. Craig Hupp

For Wayne County: Patrick B. McCauley

For City of Detroit: Mark D. Jacobs  
Robert C. Walter

For Oakland County: Jaye Quadrozzi

CLIENTS PRESENT:

Anthony Marrocco  
William Misterovich  
John P. McCulloch  
Joseph Colaianne  
Kurt Heise  
Butler Benton  
Pamela Turner  
Mary Blackamon  
Laurie Koester  
Mary Watters

Proceedings taken by mechanical stenography, transcript  
produced by computer-aided transcription

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Detroit, Michigan

Thursday, December 18, 2008

(At about 10:35 a.m.)

- - -

(Call to Order of the Court)

THE CLERK OF THE COURT: Case number 77-71100, United  
States of America versus the City of Detroit. For the court  
reporter's sake, please announce your name when you have to  
speak and each time you speak.

THE COURT: I'm delighted to see you all and without  
further ado, I'll turn the session over to my Master, Special  
Master, Tom Lewand.

MR. LEWAND: Thank you, Judge. Your Honor, nearly  
eight years ago, after more than 22 years of litigation, you  
said to this region there's a better way to resolve your  
disputes than constantly appearing before the Court. You  
encouraged the region to come together collaboratively.

To that end you appointed a consortium of 40 major  
political, business, labor and community leaders. You asked  
Bill Ford to Chair that matter and Bill turned to Tim O'Brien  
for day-to-day leadership. That group evolved to be the  
Community Leadership Group headed by Governor Milliken who  
again wisely turned to Tim O'Brien for day-to-day leadership.

Several months ago, some key elected and appointed  
officials in this region came to you and said we think we have

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a framework that will solve this issue. I would like to  
recognize the superb leadership efforts of Commissioner John  
McCulloch, his Deputy, Doug Buchholz, his lawyers, Roger Young  
and Joe Colaianne, Commissioner Marrocco and his Deputy Bill  
Misterovich, his lawyer and my law partner, Craig Hupp, Wayne  
County Director Kurt Heise and his Deputy, Butler Benton and  
his lawyer Pat McCauley. And probably most importantly, for  
her leadership, DWSD Director, Pam Turner, her trusted advisor  
Bart Foster, her lawyers Bob Walter and Mark Jacobs, Laurie  
Koester. And I would also like to acknowledge the stellar  
efforts of several of my colleagues who worked tirelessly on  
this effort, in particular Barbara Bowman and Alan Harris.

We are presenting this morning the Settlement  
Agreement which has a number of attachments to it. The first  
part of this Agreement is by way of background and purpose and  
Valerie Brader has been very instrumental in pulling that part  
together. Would you present that please to the Court?

MS. BRADER: Sure. This Settlement Agreement settles  
all matters currently outstanding before the Court; there are  
17 listed in one of the attachments to this. This includes  
the radio system dispute, all disputes related to the  
interceptors, all disputes related to the continuing oversight  
of contracts, as well as assistance to the Court by various  
groups and it is intended that the terms of this which run  
with all the attachments some 53 pages, will not just resolve

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1 the current disputes but will also provide a framework going  
2 forward that we all hope will avoid this sort of massive  
3 litigation in the future. So with that, I'll turn it back to  
4 Tom.

5 MR. LEWAND: Thank you, Valerie. In addition, I guess  
6 I think the first substantive matter that was settled was the  
7 radio contract dispute over the 800 megahertz system. That's  
8 been settled, Your Honor, by agreement to pay -- for Detroit's  
9 General Fund to pay 27 million dollars to DWSD.

10 In addition, there's a settlement of a long-standing  
11 dispute over the Macomb interceptor collapse. I have not been  
12 part of that settlement because of a conflict wall and an  
13 Order you signed, but Tim O'Brien has done a masterful job and  
14 I'll turn it over to Tim.

15 MR. O'BRIEN: Thank you, Tom. Before commenting on  
16 this, I'd like to second Mr. Lewand's remarks regarding the  
17 outstanding team of people that have been involved in this  
18 endeavor. I've said many times, but I want to say it again  
19 for the record that working on this matter and working with  
20 this group of people has been one of the great professional  
21 and personal experiences of my career and I want to commend  
22 the leadership demonstrated by the entire team in arriving at  
23 this moment.

24 Having said that, as Mr. Lewand mentioned, there have  
25 been two or three matters in dispute before this Court for

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1 the way, I notice her boss is here, Chair Mary Watters. I'm  
2 thinking of water. Sorry. This Directors Council will meet  
3 quarterly to resolve issues before they get to the litigation  
4 stage and the four principles that have been so diligent in  
5 working through this issue, as long as they stay in their jobs  
6 and I said to Pam yesterday she's got to sign a 30-year  
7 employment contract, so does Kurt Heise, Commissioner Marrocco  
8 and Commissioner McCulloch. They worked magnificently to get  
9 this resolved and it gives me a lot of confidence that the  
10 Directors Council will resolve these issues going forward.

11 THE COURT: I can tell you with a certain amount of  
12 certainty that I will not be here for those 30 years.

13 MR. LEWAND: But you'll notice, Judge, nobody in the  
14 courtroom is betting on that. We're all betting that you will  
15 be.

16 Paragraph Six. The final key new provision of this  
17 Agreement is that we are all cooperating and seeking State and  
18 Federal funding for key projects in this region and that to me  
19 is as important as anything.

20 So may it please the Court, I'm honored to have  
21 worked with all the parties. I'm honored to present this to  
22 you today. The three of us that have served as your  
23 assistants on this thing, Valerie Brader, Tim O'Brien and me  
24 have signed a request to you today for you to execute a Show  
25 Cause Order directing all parties who have not already signed

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1 some time. They relate to the cost of interceptor repairs in  
2 2004 and 2006 in Macomb County and related interest rate  
3 charges, but those matters have been collectively resolved in  
4 the aggregate amount of just over 17 million dollars, I'm  
5 happy to report.

6 MR. LEWAND: Thank you, Tim. Paragraph three, Your  
7 Honor, of the Agreement references an interceptor transfer.  
8 It's the long-standing practice in this region for  
9 interceptors to be owned by the respective county. This  
10 transfer will make Macomb and a new authority of Macomb and  
11 Oakland owners of interceptors in that area, so they are not  
12 exceptions to the rule in this region.

13 Paragraph Four we get to one of three cooperative  
14 provisions that I think are critical to the future of this  
15 region. The parties will work diligently to finalize or have  
16 worked diligently to finalize a model contract -- that's all  
17 finished, don't worry -- which of course gives us the  
18 framework for peace in this region for the next 30 years; not  
19 that there won't be disagreements, but there's a mechanism to  
20 resolve those disagreements. First through a technical  
21 advisory committee which we changed the name on -- I can't  
22 remember the right name now. But second and probably most  
23 importantly, a Director's Council which is the heart and soul  
24 of the Agreement in my opinion.

25 At least quarterly the Director, Pam Turner -- and by

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1 the document to appear before you on a date certain and give  
2 any objections they may have to this document. We would ask  
3 you to enter that Order.

4 THE COURT: I'll be happy to do so, and for the  
5 record I will now state that just before taking the bench I  
6 did sign it.

7 MR. LEWAND: Now if any of the parties would like to  
8 make a comment at this point, we would invite them to do so.

9 THE COURT: I might add that before you make your  
10 comment, for the court reporter's sake say your name.

11 MR. JACOBS: Good morning. Mark Jacobs, Dykema/Gossett  
12 representing DWSD.

13 I just want to echo the sentiments of Tom Lewand and  
14 Tim O'Brien. It's been a long, arduous five-month period of  
15 negotiation, and beyond the things that Tom described and Tim  
16 described that we've accomplished, this negotiation process  
17 has provided the opportunity for all the parties to lay on the  
18 table just about every possible grievance that they could  
19 conceive of, those that have been pending before this Court  
20 and those sorts of matters that have not bubbled up to the  
21 level of formal litigation before this Court and we've gotten  
22 all of them resolved. So this document doesn't even begin to  
23 reflect the numerous issues and problems that we've thrashed  
24 through and resolved and I think it's done a lot to strengthen  
25 the relationship between all the parties and is really going

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1 to do a lot to help all these communities work together on a  
 2 going forward basis.  
 3 So in my view, it's been tremendously successful and  
 4 we will be recommending to the Board of Water Commissioners  
 5 and the City Council that they approve this Settlement  
 6 Agreement. Thank you.  
 7 THE COURT: Thank you, Mr. Jacobs.  
 8 MR. LEWAND: Is there anyone else that would like to  
 9 address the Court? Mr. McCauley?  
 10 MR. MCCAULEY: Thank you. Good morning, Your Honor.  
 11 Patrick McCauley representing Wayne County.  
 12 This has been a long and challenging process and I  
 13 want to commend and thank the Court and its marvelous group of  
 14 experts and consultants and facilitators who put it together.  
 15 Great of Mr. Lewand and Mr. O'Brien for their marvelous  
 16 efforts in bringing all the parties together in a very, I  
 17 think, historic way. Through the sense of collegiality and  
 18 sometimes hard bargaining, good sense was reached as indicated  
 19 this morning and I certainly concur in the remarks by your  
 20 group of very, very talented people who assisted in this  
 21 process and I will recommend to Wayne County that they approve  
 22 and adopt the necessary resolutions to move this matter  
 23 forward.  
 24 I believe that the Director of Department of  
 25 Environment, Mr. Heise also has some comments, Your Honor.

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1 to you.  
 2 MR. McCULLOCH: It is and I'm speechless, Judge. Oh,  
 3 I thought the Judge indicated my name. John McCulloch, Water  
 4 Resource Commissioner from Oakland County.  
 5 It has been a -- what I would consider a fruitful  
 6 process. I think Mr. Jacobs put it best in the fact that  
 7 there were a lot of issues, both before the Court and other  
 8 issues ancillary to the system that we were able to address  
 9 during this process and it really has strengthened our  
 10 relationship within the region in dealing with these issues  
 11 and as Mr. Lewand indicated, probably the most important  
 12 aspect of this Agreement is the Directors Council to allow us  
 13 in the region to come together and deal with some of the  
 14 critical issues that are facing the system and the region in  
 15 the near term as well as in the long-term.  
 16 In addition, I think it also provides us an  
 17 opportunity, something that we've all been doing independent  
 18 but now we'll be able to do cooperatively, and that's go after  
 19 significant State and Federal funding to try to address the  
 20 finance gap that exists in dealing with the aging  
 21 infrastructure which I know is an issue, Judge, that you have  
 22 certainly discussed time and time again in relation to this  
 23 system.  
 24 So I'm very thankful that this process, at least this  
 25 portion of it is concluded and I look forward to working with

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1 THE COURT: Thank you.  
 2 MR. HEISE: Good morning. I'm Kurt Heise on behalf of  
 3 the -- actually I'm the client, Wayne County, in this matter.  
 4 Judge, this is a very historic day for our region and  
 5 I want to commend your very capable team for helping us  
 6 facilitate a process which I think will move this region  
 7 forward and will hopefully serve as an example in other areas  
 8 of regional cooperation that we desperately need nowadays.  
 9 I also would like to commend the group for the  
 10 Directors Council which will help us to collectively seek the  
 11 critical Federal and State funding that we need for a variety  
 12 of regional infrastructure improvement projects in Wayne,  
 13 Oakland, Macomb County and for DWSD, and also in Wayne  
 14 County's opinion, many of our constituent communities such as  
 15 Dearborn, Inkster and the Downriver communities that also have  
 16 serious water quality challenges under State and Federal law.  
 17 It's a historic day for all of us. I have been  
 18 honored to be part of the process and I would again like to  
 19 commend you for moving us forward and keeping us in line.  
 20 Thank you.  
 21 THE COURT: Thank you, Mr. Heise.  
 22 MR. LEWAND: Is there anyone else that would like to  
 23 address the Court?  
 24 THE COURT: I'd like to ask Mr. McCulloch to make a  
 25 few comments. I think this is the first I've ever done this

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1 Director Heise, Director Pam Turner and Commissioner Marrocco  
 2 on future issues and in policies that need to be addressed on  
 3 this system.  
 4 THE COURT: Thank you, Mr. McCulloch.  
 5 Now Mr. Marrocco, your name has been mentioned a  
 6 couple times here. Wait a minute. I see Mr. Hupp wanted to  
 7 step up to talk first.  
 8 MR. MARROCCO: Anthony Marrocco, Public Works  
 9 Commissioner for Macomb County.  
 10 I just wanted to come up here and say thank you so  
 11 much, Judge. You put a lot of time and effort in this and we  
 12 realize that and we're glad it came to a conclusion. I think  
 13 everybody is satisfied, maybe not a hundred percent, but say  
 14 98% each and we look forward to working with each other and if  
 15 need be, with the Court again in the future and we thank you  
 16 for your time. Thank you.  
 17 THE COURT: Thank you, sir. Mr. Hupp.  
 18 MR. HUPP: Craig Hupp from Bodman appearing on behalf  
 19 of Commissioner of Public Works, Commissioner Marrocco.  
 20 I'd just like to second the remarks that have been  
 21 made so far today, Your Honor. I think the wisest decision of  
 22 course was the Special Master you selected in the year 2000,  
 23 for the excellent work he's done assembling our resources and  
 24 I don't think this could have been accomplished without the  
 25 trio who assisted you on this matter, Judge, as well as others

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1 in the background.

2 I think we've made tremendous progress. A lot of  
3 credit goes to all the parties. A lot of credit goes to DWSD  
4 in the changes they have made over recent years, both as part  
5 of this process and in the rate making process which has  
6 become significantly more open and transparent and that  
7 tremendous credit to DWSD. We have a long ways to go to move  
8 ahead. There are other challenges everybody mentioned in  
9 terms of the sewer water infrastructure challenges that this  
10 region faces and I think those problems sort of dwarf the ones  
11 that we've addressed so far, and I think this Agreement  
12 provides structure for a very strong cooperative regional work  
13 to move that ahead.

14 I will say I've been involved in these matters for 10  
15 years. There's people in this courtroom who have a  
16 considerably longer history than I have had in these matters,  
17 and I would say, Your Honor, that your participation in this  
18 case has certainly been instrumental and I think without it --  
19 and I think I can speak very safely on behalf of everybody in  
20 the courtroom -- without your participation in this and you  
21 are the longest serving member as it were on this -- in this  
22 combined effort, we wouldn't be here today without the  
23 leadership and the very constructive pushing that this Court  
24 has exercised over the years and I think we all appreciate  
25 that and we look forward to the next step of continuing to

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1 if we can do this, we can do anything. Thank you.

2 MR. LEWAND: Well said.

3 THE COURT: Anyone else?

4 MR. LEWAND: Judge, we do have a photographer in the  
5 back. We didn't want to have any pictures during the court  
6 session, but if people would like to have a picture today with  
7 the Judge or as a group in front, we have someone in back with  
8 a camera who could help take pictures. So I don't know.  
9 Mike, did you want to start? Maybe if there are groups that  
10 want to come up or get a group picture?

11 THE COURT: Is that the concluding --

12 MR. LEWAND: That's the concluding remark.

13 THE COURT: Before we have our pictures taken, may I  
14 say a few words? I've said before in this case that the  
15 problems we faced cannot be waived -- cannot be solved rather  
16 -- by litigation or legislation, but by cooperation and I'm  
17 heartened and pleased that all of you have proved me right. I  
18 know it was a long road, but this is worth it. Not only have  
19 you resolved every matter in litigation, you've created a  
20 framework for future cooperation that should prevent any  
21 difficulty for us in the future.

22 Importantly, you've also come together at the right  
23 time. It is vital that this region be united when it appeals  
24 for Federal aid. This is a rough economic time in Michigan  
25 and that support will be vital to our continued success. Your

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1 address the problems. Thank you.

2 THE COURT: Thank you, Mr. Hupp. As she approaches  
3 the microphone, I will just mention her name -- I know you all  
4 know her -- but Pam Turner, we are delighted that you are here  
5 and that you are the new Director.

6 MS. TURNER: Thank you, Judge. Pamela Turner, Interim  
7 Director.

8 Almost three months ago when I was appointed to  
9 Director, I told Valerie I felt like I've been thrown into the  
10 fire, so we see how scorched I come out and actually I don't  
11 think I've done too bad. And Judge, you and I have a history  
12 with the Department because I also started in 1977.

13 THE COURT: We're survivors.

14 MS. TURNER: And I have worked with our wholesale  
15 customer for many, many years and it really is an honor for me  
16 today to be here to be part of this historic Settlement and it  
17 just -- you know, my career, even though I've been told I  
18 can't retire -- after 31 years, this is really the highlight  
19 of my career so far.

20 So I want to thank everyone that's been involved with  
21 this Settlement, all the attorneys, all the facilitators, the  
22 Judge, everyone. This is really good and I look forward to  
23 being with the Directors Council and all our people that will  
24 keep us moving in the right direction and I think that we can  
25 resolve whatever issues. We have survived this Settlement and

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1 coming together at this time will insure our success in these  
2 efforts.

3 Again, I applaud you all for your hard work and am  
4 delighted by the outcome of it.

5 Now I'm sure that there are one or more of you that  
6 might want to say something, but only for the good of the  
7 Order and I welcome you to do that before we take pictures.  
8 Anyone else want to talk?

9 As we are sitting here and I look back over the past  
10 years, we've heard today from some of the newer lawyers in the  
11 group. Mark Jacobs, you were preceded by an outstanding  
12 lawyer for years, Dick McClellan and I remember John McCulloch,  
13 that there was another outstanding man in your area, Kuhne.  
14 (phonetic) And how many years did he serve?

15 MR. McCULLOCH: Twenty-eight years, Judge.

16 THE COURT: Well, he was also in office when I first  
17 got this case assigned and he was just about as tough as you  
18 are. Oh, I mean that in a friendly way of course. Tony, you  
19 have been around forever.

20 Are there any others that wish to make any kind of a  
21 comment with regard to what we're doing here today?

22 MR. WALTER: Good morning, Your Honor. I'm Robert  
23 Walter with the City of Detroit Law Department and I joined  
24 the City's Law Department in 1982 as a very green rookie  
25 lawyer and my Supervisor -- the second day I was on the job,

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1 my Supervisor, the late great Darrell Alexander who's one of  
 2 the fine lawyers on this case -- brought me to a hearing on  
 3 this case and I've been involved in it ever since and I  
 4 remember what the relationship was between the City of Detroit  
 5 and its suburban customers back in the 1980's and I am so  
 6 happy that we have come to this date where the relationship  
 7 changed so much. It is an accomplishment that I take a lot of  
 8 pride in collectively with all of the others. I knew what we  
 9 had to do better back in the 1980's and I'm glad we've finally  
 10 gotten here with the Court's help. Thank you.

11 THE COURT: Thank you, sir. As we're talking about  
 12 the past, I just want to mention in passing that while Tom  
 13 Lewand has done a masterful job as my Special Master, he was  
 14 preceded by another outstanding lawyer, Charles Moon, and for  
 15 years he acted in that capacity and I treasured his advice.

16 Also my Court Monitor could not be here today,  
 17 Jonathan Bulkley, I must mention his name and give him credit  
 18 because he was outstanding.

19 There are some other people that as time has passed  
 20 that I think about with great interest. I only want to  
 21 mention in passing I've had a great ride in having been  
 22 involved in this case with three Mayors; Coleman Young, Dennis  
 23 Archer and Kwame Kilpatrick. I suppose it's uppermost in our  
 24 minds as we think back about over the years what participation  
 25 was of those persons. Now I'll turn it back to Tom Lewand.

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1 At the time I was working at Ford and we had commenced a  
 2 significant project at the Ford Rouge Center, maybe second  
 3 only to this assignment. I got an assignment from Bill Ford to  
 4 transfer the Ford Rouge Center, which if any of you ever been  
 5 there, I think I can fairly characterize as the mother of all  
 6 brown fields. He wanted it to be become a model 21st century  
 7 sustainable manufacturing. So I was in the middle of that,  
 8 and a colleague we all know, Jim Murray, Kurt's predecessor,  
 9 Jim Murray who had engaged me in various enforcement issues  
 10 regarding alleged noncompliance issues at Ford Motor Company  
 11 called me one day and whenever I got a call from Jim it was  
 12 never a good thing -- although I liked Jim -- and he said  
 13 there's somebody I'd like you to meet and it's Judge Feikens  
 14 and I thought oh my God, what's Jim getting me into now?

15 This is what Jim got me into. Judge Feikens  
 16 subsequently came to see what we were doing at Ford Rouge  
 17 Center and then when he asked Bill Ford to Chair the  
 18 consortium which I thought was a very wise decision, Bill  
 19 asked me to become involved with it and because of that prior  
 20 meeting and conversation, Judge Feikens was willing to allow  
 21 me to do that and as I said before, that certainly has become  
 22 as a function of both the project, the very important and  
 23 interesting nature of the project and the wonderful people  
 24 that I have had a chance to work with, one of the really  
 25 outstanding highlights of my working and professional career.

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1 MR. LEWAND: Thank you, Judge. Once again, Tim  
 2 O'Brien saved my life on this case because I had neglected to  
 3 mention our most capable Administrative Assistant, Valerie  
 4 Brader in the back -- Valerie Brader I looked at Valerie.  
 5 Jennifer Former is in the back. As I mentioned earlier today  
 6 to Jennifer, she's kept all of us -- and we have what, 35  
 7 people here -- through dozens of meetings and dozens of  
 8 drafts and kept us all working in the right direction, so  
 9 Jenn, thank you very much.

10 One other housekeeping matter before we get photos  
 11 and that is there's a gate at Bayview. There's a code you  
 12 need to get in the gate which we forgot to circulate  
 13 yesterday; it's xxxxx. That shouldn't go on the record. I  
 14 think they all have maps.

15 THE COURT: When is that function about to start?

16 MR. LEWAND: Thirty-one minutes from now the bar  
 17 opens.

18 MR. O'BRIEN: That shouldn't go on the record either.

19 THE COURT: Anyone else that wishes to say anything?

20 I'd like to have you just say one more thing about what you  
 21 were doing before you became a part of our team.

22 MR. O'BRIEN: That's an interesting offer. Certainly  
 23 probably all of us are at a place right now in our careers  
 24 where we never imagined we would be; that is absolutely the  
 25 case with me. I met Judge Feikens in a very round about way.

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1 THE COURT: Thank you, Tim. Before we recess this  
 2 particular hearing, I'll say one more time, anyone want to say  
 3 anything more? If not, then I'll see you all less than a half  
 4 hour from now at the Bayview Yacht Club where we can all  
 5 together talk a little more. With that, we stand in recess.

6 THE CLERK OF THE COURT: Court is in recess.  
 7 (Proceedings adjourned at 11:04 a.m.)  
 8 - - -  
 9

10 STATE OF MICHIGAN)  
 11 ) ss.  
 12 ) COUNTY OF WAYNE )  
 13 I, Janice D. Coleman, Official Court Reporter, certify that  
 14 the foregoing pages are a correct transcript from the record  
 15 of proceedings in the above-entitled matter.  
 16

17 S/  
 18 JANICE D. COLEMAN, CSR T095/RPR  
 19  
 20 Dated: December 22, 2008  
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